

REMARKS

This responds to the Office Action dated on October 4, 2005, and the references cited therewith.

Claims 1 and 5 are amended and claim 2 is canceled; as a result, claims 1 and 3-8 are now pending in this application.

Double Patenting Rejection

Claims 1-8 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 and 21-25 of copending Application No. 10/707,654. Applicant will file a terminal disclaimer if and when this issue is ripe for taking action.

§102 Rejection of the Claims

Claims 1 and 8 were rejected under 35 U.S.C. § 102(e) as being anticipated by Shi et al. (U.S. Publication No. 2002/0197373). The Shi et al. reference does not describe either a continuous process or a use of fermentable sucrose and water as an isotonic agent.

Claims 1, 2, 6, and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by Acton (U.S. Patent No. 1,960,985). The Acton reference describes a starch suspension that is used for germ flotation. The Examiner states that it would be inherent for this starch suspension to include fermentable sucrose. There is no indication in this reference that fermentable sugar and water are the predominant isotonic agents as is claimed. The Applicant respectfully requests the Examiner to provide a source of data to support this statement, wherein the data also shows that the Acton reference would “inherently” make an isotonic solution, other than the present application.

Claims 1, 3, 6, and 8 were rejected under 35 U.S.C. § 102(b) as being anticipated by Bienenstock (U.S. Patent No. 2,028,132). The Bienenstock patent does not describe fermentable sucrose and water either. Instead, it describes salts and organic materials. Thus, this reference does not anticipate claims 1 and 8 either.

Claims 1-8 were rejected under 35 U.S.C. § 102(b) as being anticipated by Brown et al. (U.S. Patent No. 2,122,084). The Examiner states that it would be inherent for the steeping

material described in the Brown reference to include fermentable sucrose. The Applicant respectfully requests the Examiner to provide a source of data to support this statement, wherein the data also shows that the Acton reference would “inherently” make an isotonic solution, other than the application under consideration herein. Furthermore, there is no indication in this reference that fermentable sugar and water are the predominant isotonic agents as is claimed.

§103 Rejection of the Claims

Claims 3-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shi et al. (U.S. Publication No. 2002/0197373). As discussed above, the Shi et al. reference does not describe either a continuous process or a use of fermentable sucrose and water as an isotonic agent. Thus, the Shi et al. reference cannot render claims described herein obvious.

Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Shi et al. (U.S. Publication No. 2002/0197373) taken together with Bienenstock (U.S. Patent No. 2,028,132). The Shi et al. reference does not describe either a continuous process or a use of fermentable sucrose and water as an isotonic agent. The Bienenstock patent does not describe fermentable sucrose and water either. Instead, it describes salts and organic materials. Trying to combine these reference does not remedy this deficiency. Thus, Applicant asserts that claim 6 is not rendered obvious by combining Shi et al. with Beinenstock.

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Shi et al. (U.S. Publication No. 2002/0197373) and Brown et al. (U.S. Patent No. 2,122,084). The Shi et al. reference does not describe either a continuous process or a use of fermentable sucrose and water as an isotonic agent. The Brown reference does not describe a use of fermentable sucrose either. The Examiner has stated that it would be inherent for the steeping material described in the Brown reference to include fermentable sucrose. The Applicant is requesting documentation for this assertion of inherency.

Claims 3-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Acton (U.S. Patent No. 1,960,985). Claims 3-5 were rejected under 35 U.S.C. § 103(a) as being

unpatentable over Bienenstock (U.S. Patent No. 2,028,132). Claims 4 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. (U.S. Patent No. 2,122,084).

Claims 3-5 are dependent upon claim 1. For reasons discussed above, claim 1 is not rendered obvious by the references cited. Thus, claims dependant upon claim 1, claims 3-5, are not rendered obvious by these references either.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

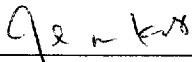
Respectfully submitted,

DOUG VAN THORRE

By his Representatives,

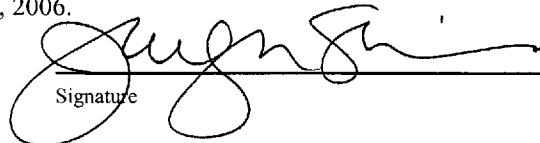
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6976

Date 3 April 06

By 
Janal M. Kalis
Reg. No. 37,650

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3 day of April, 2006.

JACLYN SKIBA
Name


Signature